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No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,
Plaintiff,

v.

THE STATE OF LOUISIANA,
Defendant,

UNITED STATES OF AMERICA,
Intervenor,

CITY OF PORT ARTHUR, TEXAS,
Intervenor.

REPLY MEMORANDUM FOR THE STATE OF LOUISIANA

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REPLY MEMORANDUM FOR THE STATE OF LOUISIANA

I.

OPENING STATEMENT

The present memorandum is entirely devoted to answering the points raised by the State of Texas' (Texas) two exceptions to the Special Master's (Master) report, and the memorandum in support thereof.

Texas has not answered the exception of the State of Louisiana (Louisiana), and we will not repeat our argument in support thereof in this memorandum.

The Master's report set out succinctly the present

status of this litigation and the issues referred to him, which are answered in his report to the Court.[1]

> "The issues as submitted and discussed in this report can be better understood if separated into five categories:
>
> a) The determination of the geographic middle of the Sabine River from 32° to 30° north latitude. Roughly this is a line beginning on the north at the point where the thirty-second parallel crosses the Sabine River and continuing generally in a southerly direction to where the Sabine River enters Sabine Lake. This is approximately the point where the thirtieth parallel crosses the river. Texas and Louisiana are in agreement as to this portion of the boundary, subject to your approval. The United States of America and the City of Port Arthur have no interest in this boundary and in this part of the controversy.
>
> (b) The determination of which of three passes is to be used in marking the geographic middle of the Sabine River where it enters Sabine Lake.
>
> c) The location of the geographic middle of Sabine Lake, Sabine Pass, and of the jetties constructed into the Gulf of Mexico in event it is concluded that the jetties form part of the baseline or mark the extension of the Sabine River into the Gulf.

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[1] In this litigation the Master filed an earlier report which has already been considered by the Court. (410 U.S. 702) We will refer to that report in this memorandum as the first report, all other references to the report refer to the report now being considered by the Court.

d) Whether or not the island designated historically and by the parties herein as 'Sam' was in existence when Louisiana was admitted as a State in 1812; whether it existed at the time of the construction of the Sabine-Neches Canal[2] by the U. S. Corps of Engineers in approximately 1906-08; whether the United States has proven its claimed ownership of such island.

e) The lateral boundary line between the States of Texas and Louisiana, and between the State of Texas and the United States in the Gulf of Mexico and the principles to be applied in determining such lateral boundary line. This is the issue covered by the order of reference of October 15, 1973.

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[2] This canal, or portions thereof, does not bear the same name on all exhibits. It, or portions thereof, is variously designated Port Arthur Canal, Intracoastal Waterway, Sabine-Neches Canal and Sabine-Neches Ship Canal, among others. In this report I will use the term Sabine-Neches Canal." (Report, pp. 4-5).

Texas' exceptions to the Master's report relates to issues (c) and (e). There is no contest over issue (a). Louisiana's exception relates to issue (b). Louisiana makes no exception to the Master's determination of issue (d).

A. Acquiescence and Prescription

Texas, in its opening statement, recognized the necessity of having the Court overrule the following findings of fact by the Master if it is to be successful.

"Your Special Master concludes, under the

> law of prescription and acquiescence[6] that this boundary has been sufficiently recognized by each State, whereby the boundary between the States of Louisiana and Texas should be determined to be the geographic middle of the two jetties as they extend into the Gulf of Mexico as that geographic middle has been determined and marked upon Louisiana Exhibit DDD. This line bears the legend 'Approximate Boundary Louisiana-Texas Jetty Channel.'

[6] For a discussion of the law of prescription and acquiescence see Original Report of Special Master beginning on page 27." (Report, p. 14)

To reach the merits of the two exceptions taken by Texas, the Court must disregard the jetties. Texas does not question the correctness of the marginal lateral boundary in the Gulf as found by the Master, if the jetties are considered.

Following Texas memorandum, we will discuss the use of the jetties before discussing the specific exceptions taken by Texas.

In an effort to de-emphasize this critical issue, Texas in footnote (1) on page 3 of its memorandum, states:

> ". . . The Master does not favor the Court or the parties hereto with any citation, authorities for this proposition. . ."

Texas must be familiar with Note 6, page 14 of the Master's report which states:

> "For a discussion of the law of prescription and acquiescence see Original Report of Special Master beginning on page 27." [2]

[2] The Master in his first report devoted pages 27-30 to a discussion of prescription and acquiescence.

Texas, in the first hearings, urged the boundary between Louisiana and Texas from the mouth of the Sabine River in the Gulf of Mexico to 32° north latitude was in the geographic middle of the Sabine by virtue of prescription and acquiescence.

Texas, also in its reply brief before the Master in the first hearing, devoted pages 31 through 51 to a discussion of its plea of acquiescence and prescription and, in summary, on page 51 of said brief, stated:

> "The following language from the Court's opinion in *Louisiana v. Mississippi*, supra, is applicable here:
>
> > 'The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive. . . .' (at page 53).
>
> That this prescription and acquiescence to the geographic middle prevails over any claim Louisiana may assert to a thalweg middle is shown in the Supreme Court's decision in *Arkansas v. Tennessee*, 310 U.S. 563."

It was on the basis of this argument and the authorities cited by Texas, including the case of *Michigan v. Wisconsin*, 270 U.S. 295, 305 (1926) and *Louisiana v. Mississippi*, 202 U.S. 1, 56-57 (1906) that the Master determined:

> "All this leads your Special Master to conclude and to report that Texas by reason of the Doctrine of Acquiescence and Prescription has further es-

tablished its claim to the west one-half of the Sabine River." (First Report, p. 30)

Texas argued the doctrine of acquiescence and prescription before the Court, but the Court said:

> "The Special Master also concluded that even if he was in error in rejecting Louisiana's claim with respect to the original location of her western boundary, Texas must still prevail by reason of prescription and acquiescence. Because we are satisfied with our conclusion, already reached, with respect to the boundary location, we need not pass upon this aspect of the Special Master's Report, although we note that the facts relied upon by him are consistent with and support the other ground for his conclusion as to Louisiana's Sabine boundary." [3]

How can Texas now seriously argue that the Master failed to favor the Court or counsel with citations of authorities sustaining his findings of acquiescence and prescription.

In making his findings of fact on acquiescence and prescription the Master considered extensive evidence introduced by Texas and Louisiana.

Louisiana introduced as Exhibit WWW 1-10 a number of affidavits starting with that of Captain Bernett W. Jardell, a Captain in charge of the Enforcement Division of Louisiana Wild Life and Fisheries Commission in Southwest Louisiana. The affidavit of Captain Jardell establishes that Louisiana has en-

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[3] *Texas v. Louisiana*, 93 S.Ct. 1215, 1220, 410 U.S. 702, 712, 35 L.Ed.2d 646; reh. den. 93 S.Ct. 2266 (1973).

forced its game and fishing laws in the east half of Sabine Pass as extended by the jetties and that Texas enforced its game and fishing laws in the west half of Sabine Pass, as extended by the jetties, to at least, the gulfward end of the jetties.

The testimony of Captain Jardell is affirmed by that of Lieutenant Arnold Rutherford of the Enforcement Division of Louisiana Wild Life and Fisheries Commission whose affidavit was introduced as Louisiana Exhibit WWW-2, and the affidavit of Norman Cheramie, a shrimper, who lives in Cameron, and whose affidavit was introduced as Louisiana Exhibit WWW-3. This is likewise true of the affidavits of Rene Terrebonne, Patrick Cheramie, Joseph A. Racca and Henry Woodgett, all residents of Cameron Parish and all having been engaged in the shrimping industry in the Gulf of Mexico for many years.[4]

This same testimony is confirmed by three residents of Texas who reside at Sabine Pass, who stated that they have acquired Louisiana shrimping licenses and other fishing licenses to fish and shrimp in the east half of Sabine Pass, as extended by the jetties, to the gulfward end of the jetties.[5]

Albert Bossley, of Sabine Pass, operates the A & B Bait Company at Sabine Pass, Texas, and stated that he has considered the center line of the Sabine Pass, as extended by the jetties to their gulfward terminus, as the boundary between Texas and Louisiana. He was

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[4] Louisiana Exhibit WWW 4-7.

[5] Louisiana Exhibit WWW 8-10.

not aware that any enforcement officers of the Texas Parks and Wild Life Commission had ever enforced fishing and game laws east of the center line of Sabine to, at least, the gulfward end of the jetties. It is most important for these Texas shrimpers to be able to fish in the east half of Sabine Lake and Pass, as extended by the jetties, because the majority of their bait shrimp are "brownies" and Texas prohibits such shrimping in the west half of Sabine Lake and Pass, as extended by the jetties.

On the original trial of this case, the affidavit of Mr. Robert L. Cross was introduced. He stated he was State Law Enforcement Coordinator of the Texas Parks and Wildlife Department from November 1, 1958 to October 1, 1969.[6] He stated that Texas enforced its game and fishing laws in the *west* half of Sabine Lake and Sabine Pass and Louisiana enforced its game and fishing laws in the *east* half of Sabine Lake and Sabine Pass.

Texas furnished Louisiana numerous regulations concerning the enforcement of the game and fishing laws in Sabine Lake and Sabine Pass and these rules show that Texas enforced its game and fishing laws only in the west half of Sabine Pass and Sabine Lake, as extended by the jetties.[7]

Texas offered in evidence the affidavit of Mr. Lewis M. Morris, dated March 18, 1974, who stated "During all of the years that I was Director of En-

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[6] Texas Exhibit B, Item 9.

[7] Louisiana Exhibit XXX.

forcement of the Jefferson County Office of Parks & Wildlife Division, the same being from 1945 through 1965, our enforcement procedures followed a handbook issued by the Austin Office of our Agency." [8] He then stated that he enforced the game and fishing laws of Texas in the entire area of both the east and west jetties.

Louisiana took Mr. Morris' deposition on April 10, 1974. Mr. Morris stated that he was only in the Enforcement Division from 1943 to 1958, and that since 1958 he has been Area Manager of Murphree's Wildlife Management Area and has nothing to do with enforcing game laws.[9]

Mr. Morris stated that the laws of Texas prohibited trawling or seining in any of the passes leading from the Gulf of Mexico into inland bodies of water, and that Texas enforced fish laws in the whole of the portions of the Sabine Pass as it extended throughout the jetties.[10]

Mr. Cross' statement and affidavit does not agree with the testimony of Mr. Morris taken under cross examination by Louisiana. Mr. Morris did admit in his deposition, however, that he was aware that Louisiana had arrested persons fishing on the east jetties.[11]

Louisiana introduced into evidence as Louisiana Exhibit UUU 1-5, oil, gas and mineral leases granted

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[8] Texas Exhibit III-1.

[9] Texas Exhibit III-1, pp. 4 and 5.

[10] Texas Exhibit III-1, pp. 17-18.

[11] Texas Exhibit III-1, pp. 50-51.

by Louisiana in the Gulf of Mexico. These leases are shown on a plat prepared by Hatley N. Harrison, Jr., and introduced in evidence as Louisiana Exhibit UUU. This exhibit establishes that Louisiana leased areas in the Gulf *west* of the lateral boundary claims of Texas. Leases granted by Texas in the Gulf were secured from Texas and introduced in evidence by Louisiana as Exhibit CCCC 1-17. Texas furnished a list and plat showing the location of these various leases, which was introduced in evidence as Louisiana Exhibit TTT 1-2.[12] This plat shows that none of the leases granted by Texas were east of the federal lease line. None of the leases were east of a line extending down the geographic middle of Sabine River as extended by the jetties to the gulfward end of the jetties.[13]

Many of the plats introduced by Texas in the initial hearing to establish a midstream boundary between Texas and Louisiana by acquiescence and prescription extend the same line through the geographic middle of Sabine River to its mouth at the gulfward terminus of the jetties.[14]

All of this evidence was considered by the Master resulting in the following findings:

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[12] The east line on this exhibit is the same as the line on the Federal Offshore Lease Map showing the lateral boundary between Louisiana and Texas. See: Louisiana Exhibit O and testimony of Mr. Bascom Giles, p. 321-325.

[13] Louisiana Exhibit TTT.

[14] See Louisiana Exhibit VVV for a list of Texas map exhibits reflecting an extension of the boundary in the geographic middle of Sabine River gulfward through the center of the jetties.

> "On most of the maps introduced in evidence by both States the geographic middle of the jetties is designated as the boundary line between the States of Texas and Louisiana. There is considerable evidence that these two States have recognized the geographic middle of the jetties as their boundary in the enforcement of fish and wildlife laws. There are some exceptions to this but your Special Master concludes without setting forth the affidavits in detail that the conclusion is justified that both States, since the jetties' construction began, have recognized the geographic middle of the channel between the two jetties as being the boundary line between the two States." (Report, p. 14)

The Court, on numerous occasions, has refused to change findings of facts by a Master based on competent evidence.

A rejection by the Court of Texas' plea to disregard the jetties will resolve Texas' exceptions, and justify the Court in overruling them.

Even if the Court disagrees with the findings by the Master that Texas and Louisiana have recognized the boundary down the geographic middle of the jetties sufficient to establish the boundary as to this area by prescription and acquiescence, then there are two other sound reasons given by the Master why the jetties should be considered in establishing the lateral boundary, namely, (1) the mouth of the Sabine in the Gulf was extended by the construction of the jetties to the gulfward terminus of the jetties and (2) the jetties are an extension of the coastline under Article 8

of the Convention on the Territorial Sea and Contiguous Zone (Convention).[15]

B. The Gulfward Terminus of the Jetties is the Mouth of the Sabine in the Gulf of Mexico

The Master determined in his first report, which was affirmed by the Court, that the boundary between Texas and Louisiana was in the geographic middle of the Sabine River from 32° north latitude to the mouth of the Sabine River in the Gulf of Mexico.[16] The mouth of the Sabine River in the Gulf of Mexico is the gulfward terminus of the jetties.

When Texas filed its brief in support of its motion for judgment based on its original complaint, it stated:

> "This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River[1] from the mouth of the River on the Gulf of Mexico to the 32nd degree of north lati-

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[15] Conventions on the Law of the Sea Adopted by United Nations Conference at Geneva, April 27, 1958 (U.N. Doc. A/Conf. 13/L.52). The Convention on the Territorial Sea and the Contiguous Zone entered into force September 10, 1964, when the requisite number of nations had ratified it. The Convention was approved by the Senate May 27, 1960, 106 Cong. Rec. 11196, and ratified by the President March 24, 1961, 44 State Dept. Bull. 609. See Treaties in Force—January 1, 1965, 263. Also United States Exhibit 000.

[16] First Report of Master, pp. 2 and 38.

tude, and for a decree confirming the boundary of the two States in the middle of said stream.

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[1] The use of the term 'Sabine River' in the Complaint, Louisiana's Answer, and this brief includes Sabine Pass and Sabine Lake. By their pleadings, the parties are in agreement that these streams form a continuous body of navigable water, and that for convenience they are referred to collectively as' Sabine River.' "

The Court, in sustaining the first report of the Master, found:

> "Texas brought this original action against Louisiana to establish its rights to the jurisdiction and ownership of the western half of Sabine Pass, Sabine Lake and Sabine River (Sabine) from the *mouth of the Sabine in the Gulf of Mexico to* the thirty-second degree of north latitude and to obtain a decree confirming the boundary of the two States as the geographic middle of Sabine." (Emphasis ours) [17]

Hatley N. Harrison, Jr., an expert Civil Engineer[18] familiar with boundary problems, testified: "It is my opinion that the mouth of the Sabine River was moved some three and a half or four miles seaward and that the mouth of the river is now at the seaward end of the jetties." (Tr. p. 153).

This opinion is confirmed by a statement contained in Texas Exhibit FFF (House of Representatives Executive Document No. 147, 47th Congress, First Session, 1882), where at page 12 we find this

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[17] 410 U.S. 702, 703.

[18] Tr. p. 58.

statement, "Now if jetties are built from the shore 1,800 feet apart, as proposed across the bar to deep water, the pass is virtually prolonged 3-1/2 miles and its mouth transferred to the same distance seaward." [19]

This opinion was given by Captain Heuer in his report to Congress on the design of the jetties long before any question of the gulfward lateral boundary between Texas and Louisiana arose.

Dr. Robert D. Hodgson, a political geographer, and the geographer to the Department of State, and Director at the Office of the Geographer in the Bureau of Intelligence and Research,[20] testifying as a witness for the United States, identified on U. S. Exhibit AAAA the gulfward terminus of the jetties as the mouth of the Sabine River:

"Q. Applying the definitions of river which we have just discussed, would you point out to the Court the mouth of the Sabine River on United States Exhibit AAAA?"

* * *

"A. I would say the mouth of the Sabine is at the closing line which is drawn between the seaward tip of the east jetty and the west jetty as indicated by a black line on the chart.

Q. Can you explain why you have chosen that line, Dr. Hodgson?

A. By the definitional aspect of the river, that it is a natural flow of water contained between

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[19] Tr. p. 155.

[20] Tr. pp. 513-514.

> parallel or nearly parallel banks and if it is not in this sense part of the river, then it must be part of the feature into which it flows, that is, the Gulf. And I would determine on the basis of the very nature of the feature that it is more river, more like a river than it is a gulf, and there I conclude it is a river." (Tr. 524, 529, 530)

Dr. Hodgson explained it was not unusual for a river to be extended by artificial banks, and that river banks occassionally extend into larger bodies into which the river is flowing. (Tr. p. 530)

United States Exhibit NNN is part of a series of 155 charts which were made of the United States territorial sea and contiguous zone. This series of charts was prepared under Dr. Hodgson's general direction through the Interdepartmental Committee on the United States Base Line, which is a part of the subcommittee of the Interagency Law of the Sea Task Force of the United States government. (Tr. p. 531) Dr. Hodgson also testified that these charts were prepared prior to the entry of the United States in this litigation. (Tr. p. 532) This series of charts "contain river mouths which extend seaward into the particular body of water which the river is flowing." (Tr. p. 532) *The mouth of the Sabine River, as illustrated on Chart 1279, is shown at the gulfward terminus of the Sabine River jetties, which represents the official position of the United States with respect to the seaward limit of its inland waters.* (Tr. p. 539) *Dr. Hodgson stated that the territorial sea of the United States is*

measured from the gulfward terminus of the east and west jetty of the Sabine River. (Tr. pp. 741-742).

U. S. Exhibit ZZZ contains many definitions of "river" which further substantiate the fact that the mouth of the Sabine River is at the gulfward terminus of the jetties.[21]

Texas has even used the jetties in plotting and establishing its internal boundaries. When Texas apportioned the marginal sea among the counties along the Gulf of Mexico under authority of Texas Senate Bill No. 338, Chapter 287, 50th Regular Session, effective in 1947,[22] the east boundary of Jefferson County started at the approximate center of a closing line at the gulfward terminus of the jetties. This was confirmed by the testimony of Dr. Hodgson (Tr. pp. 602-603) and Hatley N. Harrison, Jr. (Tr. p. 194).

United States Exhibit AAAAA, is a copy of Coast Chart No. 203, Plate No. 2353, dated May, 1899, of the coast of Texas from Sabine Pass westward to High Island, indicating that the first publication was 1892. This chart shows the jetties into the Gulf of Mexico with a notation at the end of the jetties in the Gulf "Sabine Pass". Further north on the chart where the Pass widens into a lake is a notation "Lake Sabine". This chart evidences the fact that the United States Coast and Geodetic Survey considered that Sabine Pass extended to the gulfward terminus of the jetties at least as early as 1899.

United States Exhibit BBBBB is Chart No. 203,

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[21] Tr. pp. 518, 522-524, 529-530.

[22] Louisiana Exhibits NNN and AAAA.

Edition 7, Plate No. 2353, dated June, 1901. This chart shows the jetties extending into the Gulf with the phrase along the west jetty "Sabine Pass". This chart has a notation—"Lake Sabine"—after Sabine Pass widens into Sabine Lake. It is clear that the United States Coast and Geodetic Survey considered that Sabine Pass extended to the gulfward terminus of the jetties in 1901.

Texas Exhibit RRR was taken from Chart No. 203, Plate No. 2353, dated October, 1900, and referred to as the coast of Texas from Sabine Pass westward to High Island. This chart showed the jetties into the Gulf, with the phrase near the end of the jetties, "Sabine Pass". After Sabine Pass widens into the lake, there is a phrase "Lake Sabine". The Coast and Geodetic Survey, in preparing this chart, considered that Sabine Pass was extended to the gulfward terminus of the jetties in 1900. (Louisiana's Reply Brief, pp. 11-12).

Based on this evidence the Master found:

> "There is evidence and testimony from which it could be found that the jetties extend the river and that the mouth of the river is now actually at the gulfward terminus of the jetties (See testimony of Dr. Robert D. Hodgson, transcript at 524, 529-531.[7] See also U.S. Exhibit NNN, Texas Exhibit FFF). The geographic middle of the river is therefore the middle of the jetties.

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[7] Dr. Robert D. Hodgson is the geographer to the Department of State, Director at the Office of the Geographer in the Bureau of Intelligence and Research, and author of numerous articles on political geography. See transcript pp. 513-518." (Master's Report, p. 15).

C. The Jetties are an Extension of the Coastline under Article 8 of the Convention on the Territorial Sea and the Contiguous Zone

In establishing the coastline to measure the extent of the marginal sea acquired by Louisiana under the Submerged Lands Act, the Court adopted the criteria formulated in the Convention. Under the Convention the coastline extended to the seaward extension of the jetties. (U.S. Exhibit 000)

The Court has drawn upon international laws as the source of applicable law in both interstate and federal-state boundary disputes. In at least three *interstate* boundary disputes the Supreme Court has followed the precept that, to use the Court's words, "principles of international law . . . apply also to boundaries between States constituting this country." [*Wisconsin v. Michigan*, 295 U.S. 455, 461. Also *New Jersey v. Delaware*, 291 U.S. 361, 378; *Louisiana v. Mississippi*, 202 U.S. 1, 49][23]

Article 8 of the Convention reads as follows:

"Article 8

> "For the purpose of delimiting the territorial seas, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast."

Under Texas' contentions most of both jetties and the area between them would fall in Texas.[24] *If Texas'*

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[23] U. S. Exhibit KKKK, p. 149.

[24] Texas Exhibit DDD. Although the basic map for this

contention is sustained, Louisiana would be deprived of the seabed in the east half of the area between the jetties already awarded Louisiana by the Court. Portions of the marginal sea already awarded Louisiana by the Court would be placed in question for the award considered the east jetty as part of Louisiana's coastline from which to measure the three geographical miles granted to Louisiana under the Submerged Lands Act.[25] The witnesses for Texas used Article 12 of the Convention in arguing for a median line, but refused to recognize Article 8 of the same Convention and its application to the jetties as an extension of the coastline. Texas also failed to use Article 13 of the Convention, the application of which is so clearly stated by the Master.[26]

The Court, in its Supplemental Decree No. 3 rendered in the case of *United States v. State of Louisiana*, on December 20, 1971,[27] recognized that Louisiana's rights under the Submerged Lands Act included a three mile arc projected gulfward from the terminus of the east jetty. This is shown by copy of a plat attached hereto for illustrious purposes as Appendix "A".

If this were not so, then the waters between the

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exhibit was taken from U. S. XXX, it tends to show the jetties extending westerly under Texas, when as a matter of fact the jetties extend easterly under Louisiana as shown by U. S. Exhibit XXX and Master's exhibit attached to his report.

[25] Testimony of Dr. Hodgson, Tr. pp. 732-733.

[26] Report, pp. 45-48.

[27] 92 S.Ct. 544, 404 U.S. 388, 30 L.Ed.2d 525 (1971).

jetties would be treated as part of the territorial sea and not inland waters. This distinction is important in protecting the jetties and the waters between the jetties against foreign intrusions.[28]

In discussing this distinction, Dr. Louis J. Bouchez in his book,[29] had this to say:

> "If a certain water area is considered as part of the internal waters of a coastal State those waters will fall under the complete sovereignty of that State. The coastal State may thus prohibit access of foreign ships to such water areas, unless provisions are made by the coastal State granting the normal right of free access to ships of non-coastal States. The right of innocent passage is expressly recognized in Article 5 of the Geneva Convention on the Territorial Sea:
>
> > 'Where the establishment of a straight baseline in accordance with Article 4 has the effect of enclosing as internal waters, areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided for in Article 14 to 23, shall exist in those waters.' " (Page 5)[30]

It would indeed be a strange anomaly to say that the coast line of both Texas and Louisiana extends to

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[28] Dr. Hodgson testimony, Tr. pp. 718-723.

[29] Leo J. Bouchez, *The Regime of Bays in International Law* (Leyden: Netherlands, A. W. Sythoff, 1964).

[30] Dr. Bouchez uses the phrase "internal waters" instead of "inland waters", but both phrases refer to the same waters which fall under the complete sovereignty of a coastal state.

the gulfward terminus of the jetties and not use this same point as the mouth of the Sabine River in the Gulf of Mexico in establishing the lateral boundary between the two states.

Dr. Lewis M. Alexander, a geographer retained by Texas, stated that he would not use the jetties at the Sabine River in establishing the lateral boundary between Texas and Louisiana. This opinion was based on his disagreement with the Court's opinion in the *California*[31] and *Louisiana*[32] cases, holding the coastline, for the purpose of measuring the seaward limits acquired by the states under the Submerged Lands Act, is the same coastline the United States uses in its foreign relations, including man-made harborworks.[33]

Dr. Alexander testified: "I don't agree with them [Supreme Court]. I would like to see the case reopened." (Texas Exhibit LLL-1, page 24). Dr. Alexander did admit that the *jetties should be used in establishing a lateral boundary between the United States and a foreign nation.* He testified: "I feel indeed that they should be used (jetties) as against foreign nations in delimiting our territorial waters, but they need not be taken into consideration in inter-

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[31] *United States v. State of California*, 85 S.Ct. 1401, 381 U.S. 139, 14 L.Ed.2d 296 (1965), reh. den. 86 S.Ct. 607, 382 U.S. 448, 15 L.Ed.2d 517.

[32] *United States v. State of Louisiana, et al*, 88 S.Ct. 367, 389 U.S. 155, 19 L.Ed.2d 383 (1967) reh. den. 88 S.Ct. 757, 389 U.S. 1059, 19 L.Ed.2d 861 (1968).

[33] The Court, in the *California* case [85 S.Ct. 1401, 1415-1416] adopted the definitions of the Convention for the purposes of interpreting the Submerged Lands Act.

nal boundaries between states which do not involve our position with foreign countries. These, I think, are two different things." [34]

Mr. Richard Young, who qualified as an authority on international law for Texas, testified he would not use the jetties in fixing the lateral boundary between Texas and Louisiana, and that he did not consider the gulfward terminus of the jetties as the mouth of the Sabine River. One reason given by Mr. Young was that there was water on both sides of the jetties as they extended into the Gulf.[35] Mr. Young admitted that this same condition existed at the passes of the Mississippi River where they enter the Gulf of Mexico.[36] Mr. Young also admitted he would recommend the use of jetties similar to those at the Sabine River if they existed at the Rio Grande in establishing the lateral boundary between the United States and Mexico.[37] He apparently shared Dr. Alexander's disapproval of the Court's ruling in the *California* and *Louisiana* cases.

The boundary between Mexico and the United States has been stabilized by the use of a fixed point from shore about 2,000 feet shoreward.[38] The point on

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[34] Texas Exhibit LLL-1, p. 21; also, p. 61. Dr. Hodgson stated that he saw no reason why lateral boundaries between states of the Union and between the United States and a foreign nation should not be determined by the same method. He also stated that he had never read any works that suggested that different methods should be used. Tr. pp. 745-746.

[35] Tr. p. 966.

[36] Tr. p. 1070.

[37] Tr. p. 1060-1063.

[38] United States Exhibits SSS, TTT and VVV, Tr. p. 562-569.

the shore was not the same point as Texas' historical boundary at the Rio Grande in 1845. Texas' modern shore was used in fixing the boundary. The use of the jetties at the Sabine will stabilize the lateral offshore boundary between Texas and Louisiana.

In summing up his findings that the baseline should include the jetties the Master stated:

> "It is the belief of your Special Master that the case law generated by the Submerged Lands Act requires that the baseline used to construct the lateral boundary in this case include the jetties pursuant to Articles 8 and 12. Moreover there is expert testimony which would support a finding that the mouth of the river is at the terminus of the jetties. The expert testimony was offered by Dr. Hodgson (p. 529 of Transcript). Prescription and acquiescence evidence also indicates that the geographic middle of the jetty channel marks the lateral boundary. Furthermore, a lateral boundary line drawn using the modern coast with a baseline including a closing line across the river at the head of the jetties would produce an inequitable division of the seabed granted to the states. Such a line would be the most easterly of any proposed. Such a line is far to the east of even the Texas statutory line, and is also east of the line argued for by Texas as its primary contention.
>
> The Special Master concludes that the baseline should include the jetties of Texas and Louisiana. Any construction of Article 13 which requires the baseline to include a closing line at the head of the jetties, rather than at the terminus, is rejected. The Convention (Articles 3, 8 and

12), the case law, and equity require this conclusion." (Report of Special Master, pp. 47-48).

II.
TEXAS' EXCEPTIONS TO THE MASTER'S REPORT

Texas has filed two formal exceptions to the Master's report, both of which concern the maritime boundary between Texas and Louisiana and Texas and the United States in the Gulf of Mexico. The first exception is leveled at the failure of the Master to find that there was a historic lateral boundary in the Gulf of Mexico between Texas and Louisiana. The second exception is leveled at the finding of the Master that the jetties must be considered in fixing the lateral maritime boundary between Texas and Louisiana and Texas and the United States in the Gulf of Mexico.

A. The Master was Correct in Holding That There was no Historical Maritime Boundary Between Texas and Louisiana and Texas and the United States in the Gulf of Mexico

The finding of the Master on this issue, which is the subject of Texas' exception, reads:

> "Your Special Master concludes, and recommends, that the Court find that a lateral maritime boundary in the Gulf was not established in 1836 or in the period from 1845 to 1848 or thereafter." (Report, p. 37).[39]

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[39] See pages 35-45 of the report for the Master's sound reasoning for rejecting the claim by Texas of a historic lateral boundary in the Gulf.

The Master's findings are correct. In 1947 the Court, in the first *California* case,[40] held that the States of the Union owned no marginal sea. Their boundaries stopped at the low water mark or where their inland waters met the open sea. In 1950 the Court applied this principle to both Louisiana and Texas.[41] To grant rights in the marginal sea to the various states bordering on the Pacific, Gulf of Mexico, Atlantic and Great Lakes, the United States Congress, in 1953, passed the Submerged Lands Act,[42] which established two separate types of grants of submerged lands to the several states.

The first was an unconditional grant allowing each State to claim a seaward boundary out to a line three geographical miles distant from its coast line. The second was a grant conditioned on prior history. The conditional grant allowed States bordering on the Gulf of Mexico to claim the historical boundary they possessed when they were admitted into the Union, but not greater than three leagues. The Court determined, Louisiana had no historic boundary and limited Louisiana's claim to three geographic miles from its coast line.[43] The Court, at the same time, recognized

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[40] *United States v. State of California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947).

[41] *United States v. State of Texas*, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221 (1950) and *United States v. State of Louisiana*, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216 (1950).

[42] 67 Stat. 29 (1953); 43 U.S.C. 1301, et seq.

[43] *United States v. State of Louisiana, et al*, 80 S.Ct. 961, 363 U.S. 1, 121, 4 L.Ed.2d 1025, 1096, reh. den. 81 S.Ct. 36, 364 U.S. 856, 5 L.Ed.2d 80, supplemented 86 S.Ct. 419, 382 U.S. 288, 15 L.Ed.2d 331 (1960).

Texas had a historic boundary of three leagues when it was admitted into the Union in 1845.[44]

When Texas was admitted into the Union in 1845,[45] its boundary was on the west bank of the Sabine River as originally established by the Treaty of 1819[46] and confirmed by later treaties and finally approved and staked in 1840.

The Court, in rejecting Texas' claim that it should be treated differently from California in view of the fact that it was an independent nation on its admission into the Union in 1845, had this to say:

> "The 'equal footing' clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the dominium and imperium in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an 'equal footing' with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then

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[44] Id., 363 U.S. 1, 36.

[45] Act of Congress admitting the State of Texas into the Union on December 29, 1845. 9 Stat. 108.

[46] The Treaty of Amity, Settlement and Limits between the United States and Spain in 1819. 8 Stat. 252.

took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as *an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.*" [47] (Emphasis ours)

The Court, in its very recent decision in the case of *United States v. State of Maine, et al*, 95 S.Ct. 1155 (1975), reaffirmed the paramount rights of the Federal Government in the marginal sea. In commenting on the *Texas* case mentioned above, the Court stated:

"United States v. Texas unmistakably declares this constitutional proposition. There, Texas claimed that prior to joining the Union, she was an independent sovereign with boundaries extending a substantial distance in the Gulf of Mexico—boundaries which Congress had allegedly recognized when Texas was admitted to the Union. In deciding against the State, the Court did not reject the prestatehood rights of Texas as it had the rights of the 13 original States in the *California* case. On the contrary, the Court was quite willing to 'assume that as a republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of the riches which it held. In other words, we assume that it had *dominium* and *imperium* in and

[47] *United States v. State of Texas*, 70 S.Ct. 918, 923, 339 U.S. 707, 717, 718, 94 L.Ed. 1221, reh. den. 71 S.Ct. 277, 340 U.S. 907, 95 L.Ed. 656 (1950).

> over this belt which the United States now claims.' 339 U.S., at 717, 70 S.Ct. at 923. Such prior ownership nevertheless did not survive becoming a member of the Union* * *"

In view of the public and private business which has been transacted in the nearly 30 years since the *California* case, and the substantial litigation and legislation which has evolved from that holding, the Court stated:

> "... We are quite sure that it would be inappropriate to disturb our prior cases, major legislation, and many years of commercial activity[9] by calling into question, at this date, the constitutional premise of prior decisions....

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[9] We have long held that the doctrine of *stare decisis* carries particular force where the effect of re-examination of a prior rule would be to overturn long-accepted commercial practice. See, e.g., M'Gruder v. Bank of Washington, 9 Wheat. (22 U.S.) 170, 6 L.Ed. 598, 602 (1824); Rock Spring Distilling Co. v. W.A. Gines & Co., 246 U.S. 312, 320, 38 S.Ct. 327, 329, 62 L.Ed. 738 (1918)."

According to the opinions of this Court, therefore, Texas had no additional rights in the marginal sea than the other states and, consequently, Texas had no lateral boundary in the marginal sea between it and Louisiana. Texas only acquired rights in the marginal sea on the passage of the Submerged Lands Act of 1953.

After the Supreme Court determined that Texas was entitled to a historical boundary in the Gulf of Mexico to establish rights under the Submerged Lands Act, Texas attempted to have this historic boundary

extend from the Sabine jetties in the Gulf of Mexico. In discussing the several grants under the Submerged Lands Act, Justice Black, in the case of *United States v. State of Louisiana, et al,* said:

> "... Congress in 1953 passed the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315, which makes two entirely separate types of grants of submerged land to the States. The first is an unconditional grant allowing each coastal State to claim a seaward boundary out to a line three geographic miles distant from its 'coast line.' The second is a grant conditioned upon a State's prior history. It allows those States bordering on the Gulf of Mexico, which at the time of their entry into the Union had a seaward boundary beyond three miles, to claim this historical boundary 'as it existed at the time such State became a member of the Union,' but with the maximum limitation that no State may claim more than 'three marine leagues' (approximately nine miles). In United States v. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 363 U.S. 1, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960), we held that Texas qualified for this conditional three-league grant." [88 S.Ct. 367, 368, 389 U.S. 155, 156]

The Court, in the same case, in recognizing that artificial jetties are part of the coast line, stated:

> "Article 8 of this Convention makes the following provision for artificially constructed extensions into the sea: 'For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of

the harbour system shall be regarded as forming part of the coast.' (1964) 15 U. S. T. (Pt. 2) 1607, 1609. Thus, it is clear that in the case of the three-mile unconditional grant artificial jetties are a part of the coastline for measurement purposes, and if Texas were claiming under the standard three-mile grant, its argument regarding the jetties would be far more persuasive.

"Texas has not claimed the standard three-mile grant, however, but has asserted ownership over three marine leagues or approximately nine miles of submerged land, and this Court has sustained that claim." [88 S.Ct. 367, 369, 389 U.S. 155, 158]

The Court, in rejecting Texas' claim, went on to say:

"Thus, the State of Texas, which has been allowed by the United States to claim a larger portion of submerged lands because of its historical situation, is limited in its claim by fixed historical boundaries. It may not combine the best features of both grants in order to carve out the largest possible area for itself. If it wishes to take advantage of the present three-mile grant then it may use its present coastline as defined by Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, supra, to include artificial jetties. *But if Texas wishes to take under the more expansive historical grant, it must use boundaries as they existed in 1845 when Texas was admitted to the Union.* At that time there were no artificial jetties in existence so obviously they are not considered." [88 S.Ct. 367, 370, 389 U.S. 155, 160] (Emphasis ours).

The Court finally held:

> "Thus, we hold today that the congressional grant to Texas of three marine leagues of submerged land is measured by the historical state boundaries 'as they existed' in 1845 when Texas was admitted into the Union. The United States is entitled to a supplemental decree to this effect, and we grant 60 days to each of the parties in which to submit proposed supplemental decrees for our consideration." [48]

In 1845 Texas' boundary was on the west bank of the Sabine River and, therefore, did not include any of the river or river mouth. Texas' historical lateral boundary claim is based on owning one-half of Sabine River in 1845, which it did not own.

To overcome these facts, Texas argues that soon after it declared its independence from Mexico on March 2, 1836, the new Republic of Texas defined its boundary, described in part, as: "beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth

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[48] Texas had the option to take under either the unconditional grant or the grant conditioned on prior history. It could not take the best of both. The west jetty fell in Texas under either grant as harbor works under Article 8 of the Convention on the Territorial Sea and the Contiguous Zone. Texas attempted to claim the conditional grant since it gained more territory than claiming under the unconditional grant and thereby attempted to use the jetties as a coastline from which to measure three leagues. If Texas acquired less territory under the conditional grant, it still could use the unconditional grant.

of the Rio Grande. . ." [49] Texas further argued that when it was admitted into the Union the annexation resolution in 1845 stated that there would be included in the new state all the territory rightfully belonging to the Republic of Texas.[50] Texas failed to mention that the United States recognized the Republic of Texas in March of 1837, and that on April 25, 1838 the United States entered into a convention with the Republic of Texas to establish the boundary between the two countries in accordance with the treaty between the United States and Spain of 1819, which was later ratified in the treaty between the United States and the Republic of Mexico in 1828.

The treaties recognized that the boundary "shall begin on the Gulf of Mexico, at the mouth of the River Sabine, in the sea, continuing north, along the west bank of that river." It is important to recognize the treaty called for the boundary to "begin on the Gulf of Mexico", not in the mouth of the Sabine River. This was the boundary of the Republic of Texas when it entered the Union as a state in 1845. This 1838 treaty took precedence over the 1836 act of the Republic of Texas when the Republic of Texas was accepted in the Union as a state in 1845.

Therefore, in 1845 Texas' boundary was on the west bank of the Sabine River as it entered the Gulf. Even if we assume Texas had at that time a historic three league maritime boundary in the Gulf, it was

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[49] 1 Laws, Republic of Texas 3-7, Vernon Annot. State Constitution.

[50] 5 Stat. 797.

limited by the Treaty of 1838 between the United States and the Republic of Texas, which would have placed its starting point on the west bank of the Sabine. The Act of 1848 permitting Texas to extend its boundary to the middle of Sabine Pass, Sabine Lake and Sabine River, carried with it no marginal sea.

This is shown by the act of the United States Congress on July 5, 1848 permitting Texas to extend its eastern boundary to one-half of Sabine Pass, Sabine Lake and Sabine River which contained the following language:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." [51]

Texas therefore had no historic marginal lateral boundary in the Gulf when it entered the Union in 1845. Any area in the Gulf east of the west bank granted Texas under the Submerged Lands Act extended only three marine miles from its present coast line.[52]

This historic legal position was admitted by S. D.

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[51] 9 Stat. 245.

[52] In 1845 and today the United States has recognized only a three mile territorial sea from its coastline. Dr. Hodgson, Tr. pp. 607-608.

McDaniel in arguing Texas' claim before the Court in this case, when he said, in answer to a question by the Court as to whether or not the fixing of the boundary would affect the offshore boundary:

> "That is correct. This does not affect the United States, I do not think, because as to the United States, the three-league limit only comes as far as our historic boundary, and Congress has not consented for us to extend it here any more than they have consented for us to extend up here north of the 32nd degree of latitude. So, we have no controversy with that." [53]

The Court has decided Texas' seaward boundary is to be measured from its present or future coastline. It follows this same rule applies as found by the Master in establishing the lateral boundary among Texas, Louisiana and the United States.

Texas discussed a stipulation between Texas and the United States, referred to by the Court in the case of *United States v. Louisiana, et al, (The Texas Boundary Case)*.[54] In the Court's opinion it referred to a decree which was entered and reported in 89 S.Ct. 1614. This decree, after giving the coordinates of the boundary between the United States and Texas in the Gulf of Mexico, stated:

> "As against the United States, with the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313, the State of Texas is entitled to—

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[53] Transcript of argument before the United States Supreme Court on December 11, 1972.

[54] 89 S.Ct. 768, 394 U.S. 1 (1969).

(a) All the lands, minerals and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with Mexico *and on the east by the western boundary of Louisiana and an extension thereof, that are within three geographical miles from the present or future coastline as referred to* in § 2(c) of the Submerged Lands Act, 43 U.S.C. § 1301(c); and

(b) All the lands, minerals and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with Mexico and on *the east by the western boundary of Louisiana and an extension thereof, less than three marine leagues gulfward from the present or future coastline as referred to* in § 2 (c) of the Submerged Lands Act,43, U.S.C. § 1301(c) that are landward of the line described in paragraph 1(b) hereof." [89 S.Ct. 1614, 1621] (Emphasis ours)

Therefore, Texas has the option, as we have previously stated, to measure from its present or future coastline three geographical miles. The three mile boundary may extend beyond the line fixed by the coordinates in the decree, but the three league boundary cannot extend beyond the coordinates fixed in the decree, based on Texas' 1845 coastline. Therefore, the Court has already decided that Texas may use the *west jetty* in establishing a three marine mile territorial sea.

It is obvious from these two paragraphs of the Court's ruling that, in determining the lateral boundary among Texas, Louisiana, and the United States, that the present coastline is to be used in fixing the

lateral boundary. This includes the jetties as an extension thereof at Sabine Pass under Article 8 of the Convention. The use of any other coastline would do violence to the decree of the Court fixing Texas' gulfward boundary between the United States and Texas.

Texas had a boundary between it and Mexico commencing at the mouth of the Rio Grande when it entered the Union in 1845. The boundary between the Republic of Texas and Mexico was fixed by the Treaty of 1836, commencing at the mouth of the Rio Grande. To locate and fix this boundary Dr. Hodgson testified that the United States and Mexico on November 23, 1970 fixed the lateral boundary between United States and Mexico at the mouth of the Rio Grande, which became the boundary between Mexico and Texas. This moved the historic boundary of 1845 north[55] since the mouth of the river had moved north. Even though the establishment of the boundary between United States and Mexico, which became the boundary of Texas, changed the historical boundary that Texas had in 1845, nevertheless the new boundary became binding on Texas.[56] There is nothing different between the facts in the Mexico-United States boundary settlement and in recognizing the Sabine River jetties, which were constructed in 1883 by the U.S. Corps of Engineers at the request of and for the benefit of the citizens of Texas and Louisiana.

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[55] See Tr. p. 562, et seq. and Texas Exhibit TTT.

[56] Tr. p. 733-734.

The only obvious fact resulting from this discussion is that the Court, in the decree fixing the gulfward boundary between Texas and the United States, has stated that the lateral boundary between Texas and Louisiana is to be measured from Texas' modern coastline. The Court has also made it clear that Texas is bound by the lateral boundary between the United States and Mexico in determining and fixing Texas' southern lateral boundary. As noted above, this lateral boundary was established from Texas' *modern coastline.*

Even in considering the median line proposed by Texas, based on its historic coastline, the Master concluded "that the median line on Texas Exhibit DDD does have several technical defects which make the line inaccurate." [57] The Master then went on to state that he is not basing his conclusion on the inaccuracy of the line, but on the fact that he found that Texas did *not* have a lateral boundary in the Gulf in 1845 and further, the line proposed by Texas would produce an inequitable result.[58]

Texas' statutory line was based on the "thalweg" doctrine previously rejected by the Court in this case. The Master also referred to the testimony of Mr. Bascomb Giles, former Texas Land Commissioner, when the statutory line was created by the Texas Legislature, and stated:

"Since the 'thalweg' doctrine was rejected by

[57] Report, pp. 39-40.
[58] Report, p. 40.

your Special Master in his first report, and affirmed by this Court in that respect, it is clear that no extension of such a 'thalweg' line is acceptable in this dispute." [59]

B. There is no Basis for Texas' Argument that the Jetties Should be Disregarded

Texas argues that, whether the lateral boundary used existed in contemplation of law since Texas' admission to the Union (an inchoate boundary) or whether some other view of that lateral extension is accepted, it is clear that the departure point for the lateral boundary has always been the "mouth" of the Sabine River.

In rejecting this contention of Texas, the Master said:

> "The Special Master concludes that the position of the United States is a sound one, namely, that the jetties should be used in determining the boundary since both jetties are part of the coast under Article 8 and their use is not inequitable." (Report, p. 45).

To demonstrate the correctness of this determination, the Master discussed Article 13 of the Convention, which provides:

> "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks." (Report, p. 45).

After discussing the application of Article 13 of

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[59] Report, p. 40.

the Convention to this case, the Master then concluded:

> "The Special Master concludes that the baseline should include the jetties of Texas and Louisiana. Any construction of Article 13 which requires the baseline to include a closing line at the head of the jetties, rather than at the terminus, is rejected. The Convention (Articles 3, 8 and 12), the case law, and equity require this conclusion." (Report, p. 48).

It is strange that Texas and its witnesses rely on Article 12 of the Convention to justify a median line, but fail to recognize the application of Article 8 of the Convention, which recognizes the jetties as part of the present coastline.

Texas argues that the proper application of Article 12 of the Convention compels a conclusion that the jetties should not be used in fixing the lateral boundary. The two experts for Texas, namely Dr. Lewis M. Alexander and Mr. Richard Young, do not agree with this conclusion by Texas, for they both recognized that if the jetties existed on a boundary river between the United States and foreign nation it should be used in establishing a lateral boundary. They disagree with the Court's application of the Convention to rights acquired by the States under the Submerged Lands Act, and this accounts for their rejection of the jetties.

While criticizing the Court's use of the Convention in establishing the rights of the States under the Submerged Lands Act, these two experts, at the same time, urged Article 12 of the Convention as a basis

for establishing a median line for the lateral boundary between Texas and Louisiana and Texas and the United States. This inconsistency, no doubt, accounted in part for the Master's rejection of their expert opinion.

For the foregoing reasons and those advanced in Part IA, B, and C of this memorandum, Louisiana urges that the Master's finding that the jetties should be considered in determining the maritime lateral boundary between Louisiana and Texas and between Texas and the United States is correct and that Texas' exceptions should be overruled.

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SEE FOLDOUT NO 2

CONCLUSION

We respectfully urge that the two exceptions filed by Texas be overruled and that the exception of the State of Louisiana be maintained and the Master's Report be accepted in all other particulars, except as the boundary enters Sabine Lake from Sabine River it should be in the west channel as set forth on Louisiana's Exhibit DDD.

Respectfully submitted,

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CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26 day of June, 1975, I served copies of the foregoing Reply Memorandum for the State of Louisiana, by transmitting conformed copies of the same by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General and Attorney General of the United States, and the City of Port Arthur, Texas, through its City Attorney.

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